

**PATENT****Application # 09/976,022****Attorney Docket # 1999-0644CON (1014-076)****REMARKS**

Claim 1 has been amended for reasons unrelated to patentability, including at least one of: to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification thereby not narrowing the scope of the claim, to detect infringement more easily, to enlarge the scope of infringement, to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.), to expedite the issuance of a claim of particular current licensing interest, to target the claim to a party currently interested in licensing certain embodiments, to enlarge the royalty base of the claim, to cover a particular product or person in the marketplace, and/or to target the claim to a particular industry.

Claim 3 was amended solely for addressing an informality, and thus, not for reasons related to patentability.

Claims 8-20 have been added. Claims 1-20 are now pending in this application. Claims 1, 8, and 16 are the independent claims.

**I. The Objection to Claim 3**

Claim 3 was objected to because of informalities. Claim 3 has been amended to correct the informality. Therefore, Applicants respectfully submit that any grounds for this objection, and respectfully request acknowledgment thereof.

**II. The Obviousness Rejection**

Claims 1-7 were rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of Cao (U.S. Publication No. 20020181485) in view of Helles (U.S. Patent No. 6,639,895). These rejections are respectfully traversed.

Claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Cao (U.S. Publication No. 20020181485) and Helles (U.S. Patent No. 6,639,895) as applied to claim 1

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above, and further in view of Dupont (U.S. Patent No. 6,724,781). This rejection is respectfully traversed.

None of the cited references, either alone or in any combination, establish a *prima facie* case of obviousness. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." See MPEP 2143.

Independent claim 1 recites "within a failed communications node, detecting a failed optical device; attempting to restore communications through the failed communications node via a backup optical device". Cao does not expressly or inherently teach or suggest "within a failed communications node, detecting a failed optical device; attempting to restore communications through the failed communications node via a backup optical device". Neither Helles nor Dupont overcome the deficiencies of Cao.

Thus, even if there were motivation or suggestion to modify or combine the cited references (an assumption with which the applicant disagrees), and even if there were a reasonable expectation of success in combining or modify the cited references (another assumption with which the applicant disagrees), the cited references still do not expressly or inherently teach or suggest **every** limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness.

Because no *prima facie* rejection of any independent claim has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

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**III. Allowable Subject Matter**

The following is a statement of reasons for the indication of allowable subject matter:

“none of the references of record alone or in combination disclose or suggest the combination of limitations found in the independent claims. Namely:

claims 1-7 are allowable because none of the references of record alone or in combination disclose or suggest ‘within a failed communications node, detecting a failed optical device; attempting to restore communications through the failed communications node via a backup optical device’;

claims 8-15 are allowable because none of the references of record alone or in combination disclose or suggest ‘switching from a failed optical device to a backup optical device responsive to the detected error rate exceeding the predetermined threshold’; and

claims 16-20 are allowable because none of the references of record alone or in combination disclose or suggest ‘switching from a failed optical device to a backup optical device responsive to the single bit error.’”

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**CONCLUSION**

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC

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